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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/506,781	03/25/2005	Johannes Godefridus Gerardus van der Poel	1063-0105PUS1	7702

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EXAMINER

HOLMAN, JOHN D

ART UNIT	PAPER NUMBER
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3643

NOTIFICATION DATE	DELIVERY MODE
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06/27/2007

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/506,781	Applicant(s) VAN DER POEL, JOHANNES GODEFRIDUS GERAR	
	Examiner John D. Holman	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 13-15 and 18-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Ennis (US 4354291).

Regarding claim 13, Ennis discloses a brushing device comprising an oblong brush (48) set in motion by a driving means (56), at least one flexible element (102) fixed at one end directly to a rigid, non-movable structure (50) and being connected at an opposite end to a rigid frame (52) which allows the brush to have a vertical orientation in the absence of a force and a horizontal orientation in the presence of a force. See Ennis figure 12 and 11. Depending on the amount of force applied, the brush is capable of swiveling to a substantially horizontal orientation. Calling the brushing device a livestock brushing device is merely displaying the device's intended use since the term does not describe any structural limitation that is being placed in the claim.

Regarding claim 14, Ennis discloses a brushing device wherein the oblong brush (48) consists of a single brush. See Ennis figure 12. Because the independent claim uses the term comprising, more than one brush can exist. In this case, applicant is

merely stating that the specific brush consists of a single brush and not that the device itself only has a single brush.

Regarding claim 15, Ennis discloses a brushing device comprising an oblong brush (48) set in motion by a driving means (56), at least one flexible element (102) which allows the brush to have a vertical orientation in the absence of a force and a horizontal orientation in the presence of a force, wherein the oblong brush (48) consists of a single brush, wherein an end of the driving means (56) opposite to the brush (48) is exposed. See Ennis figure 12 and 11. Due to the language that merely states that the end is exposed and does not define what the end is exposed to, the end of the driving means disclosed by Ennis can be considered to be exposed to many things such as a housing, air, a rigid member, etc. Depending on the amount of force applied, the brush is capable of swiveling to a substantially horizontal orientation. Also, because the independent claim uses the term comprising, more than one brush can exist. In this case, applicant is merely stating that the specific brush consists of a single brush and not that the device itself only has a single brush.

Regarding claim 18, Ennis discloses a brushing device wherein the at least one flexible element (102) extends along at least one side of the driving means (56). See Ennis figure 12.

Regarding claim 19, Ennis disclose a brushing device wherein an end of the driving means (56) opposite to the brush (48) is exposed. See Ennis figure 12. Due to the language that merely states that the end is exposed and does not define what the

end is exposed to, the end of the driving means disclosed by Ennis can be considered to be exposed to many things such as a housing, air, a rigid member, etc.

Regarding claim 20, Ennis discloses a brushing device wherein the at least one flexible member (102) includes a rigid frame (46), wherein one end of the driving means (56) is fixed to the rigid frame (46). See Ennis figure 12.

Regarding claim 21, Ennis disclose a brushing device wherein the brush (48) and the driving means (56) are coaxially arranged with respect to each other and the brush (48) and the driving means (56) swivel together when acted upon. See Ennis figure 13.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 and 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ennis (US 4354291) in view of Korfgan (Us 4614449).

Regarding claim 1, Ennis discloses a brushing device comprising an oblong brush (48) having a shaft (50), a driving means (56), a flexible carrying element (102), which allows the brush to have a vertical orientation in the absence of a force and a horizontal orientation in the presence of a force. See Ennis figure 2 and 11. Depending on the amount of force applied, the brush is capable of swiveling to a substantially

horizontal orientation. The claim differs from Ennis' brushing device in calling for the brush to have hairs projecting substantially radially from the shaft when the driving device is not driving the oblong brush. Korfgan discloses a brushing device comprising a shaft (3) having hairs (31) projecting substantially radially therefrom when the driving device is not driving the brush. See Korfgan figure 1 and column 2, lines 59-64.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Ennis' brushing device in view of the teachings of Korfgan to include the hairs to project substantially radially from the shaft for the purpose of having an optimum cleaning effect of the hairs (column 3, lines 1-5). Calling the brushing device a livestock brushing device is merely displaying the device's intended use since the term does not describe any structural limitation that is being placed in the claim.

Regarding claim 2, Ennis as modified in claim 1 discloses a brushing device comprising an oblong flexible element (102). See figure 11.

Regarding claim 3, Ennis as modified in claim 1 discloses a brushing device comprising a tubular flexible element (100, 102). See figure 11.

Regarding claim 4, Ennis as modified in claim 1 discloses a brushing device comprising a coil spring (102) for the flexible element (100). See figure 11.

Regarding claim 5, Ennis as modified in claim 1 discloses a brushing device comprising a driving means (56) rigidly connected to the brush (48). See figure 13.

Regarding claim 7, Ennis as modified in claim 1 discloses a brushing device comprising a driving means (56) designed for rotating the brush (48) about its longitudinal axis. See figure 11.

Regarding claim 8, Ennis as modified in claim 1 discloses a brushing device comprising a driving means (56) designed for moving the brush (48) in a plane parallel to the longitudinal axis of the brush. See figure 11.

Claim 9 differs from Ennis's brushing device as modified in claim 1 in calling for drip-feeding a treatment agent above the brush. Korfgan discloses a cleaning brush (1) with a passage above the brush for liquid to flow through onto the brush. See column 1, lines 56-65. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Ennis's washing apparatus in view of the teachings of Korfgan to include a means for drip-feeding a treatment agent onto the brush for the purpose of providing a cleaning agent to the brush.

Regarding claim 10, Ennis as modified in claim 1 discloses a brushing device wherein the flexible element (100) comprises one or more universal couplings. Universal coupling is defined as "coupling that connects two rotating shafts allowing freedom of movement in all directions" as defined by <http://www.thefreedictionary.com/coupling>. See figure 11.

Regarding claim 11, Ennis as modified in claim 1 discloses a brushing device wherein the oblong brush (48) consists of a single brush. See Ennis figure 11 and 12. Because the independent claim uses the term comprising, more than one brush can exist. In this case, applicant is merely stating that the specific brush that is being described consists of a single brush and not that the device itself only has a single brush.

Regarding claim 12, Ennis as modified in claim 1 discloses a brushing device wherein the at least one flexible element (102) extends along at least one side of the driving means (56) and is fixed directly to a rigid, non-movable structure (52). See Ennis figure 11.

Claim 16 differs from Ennis as modified in claim 1 in calling for the diameter of the brush to be one-half meter. It would have been an obvious matter of design choice to make the diameter one-half meters, since applicant has not disclosed that this diameter solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with a diameter less or greater than one-half meters.

Regarding claim 17, Ennis as modified in claim 1 discloses a brushing device wherein the carrying means also includes a rigid frame (46) and an end of the driving means (56) facing the brush (48) is rigidly connected to the rigid frame. See Ennis figure 11 and 12.

Response to Arguments

Applicant's arguments filed 3/30/2007 have been fully considered but they are not persuasive.

As stated in the previous Office Action mailed on 6/23/2006, Examiner maintains his position that the brushing device is capable of swiveling to a substantially horizontal orientation. The mounting cylinder would not prevent the movement of the brush to

Art Unit: 3643

such as position, rather just slightly impede the movement to the horizontal position.

Applicant states that the cylinder is not long enough for allow such movement, but since there is no dimensions for the cylinder Examiner relies on the drawing, which appear to have enough length of the cylinder to move to a *substantially* horizontal position. A damper works to stop movement during immediate high force situations, which in this case is what is stated in the specification by Ennis. This does not mean that the damper cannot be fully extended. With continuous force a damper will extend or retract the entire length of the cylinder, in this case creating a connection that is twice as long than the fully retracted damper as shown in figure 12.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the combination of Ennis and Korfgan discloses all the claimed limitations. Also, Korfgan teaches rigid brush bristles and a means for drip-feeding a treatment on the surface of the object to clean, which would increase the efficiency of cleaning.

In response to applicant's argument that Ennis and Korfgan is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the

Art Unit: 3643

applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both references are in the field of brushing devices. Also, Korfgen is reasonably pertinent to the particular problem, which is cleaning an object, teaches rigid brush bristles and a means for drip-feeding a treatment on the surface of the object to clean, which would increase the efficiency of cleaning.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John D. Holman whose telephone number is 571 272-2754. The examiner can normally be reached on Monday through Friday 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 571 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3643

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JDH

DE. [Signature]
Timothy D. Collins
Primary Examiner
3643